



L. JOYCE HAMPERS  
COMMISSIONER

# *The Commonwealth of Massachusetts*

*Department of Revenue*

*Leverett Saltonstall Building,*

*100 Cambridge Street, Boston 02204*

October 27, 1982

("Company") is a Massachusetts corporation that serves as a consultant, primarily to the United States and to state and local governments. It has entered into a contract with the Small Business Administration, a regularly constituted agency of the federal government, to study the role of small businesses in stimulating economic development in depressed and declining urban areas. The contract requires the Company to purchase published reports ("Reports") comprising information relating to business activity in various localities, and provides that the Company "will acquire the [Reports] for use under this contract which will become Government Owned upon completion of the contract."

You inquire whether the Company's purchase of the Reports will be subject to the sales tax.

General Laws Chapter 64H, Section 6(d) exempts from taxation sales to the United States, the Commonwealth of Massachusetts or any political subdivision thereof, or their respective agencies. A purchaser is an "agency" for purposes of this provision only if it is a regularly constituted department of government or an entity wholly owned by the government and exercising exclusively governmental functions. First Agricultural National Bank v. State Tax Commission, 353 Mass. 172 (1967) (reversed on other grounds, 392 U.S. 339 (1968)).

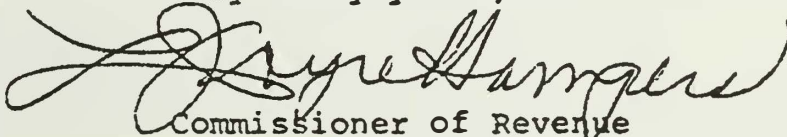
General Laws Chapter 64H, Section 6(a) exempts sales which the Commonwealth is prohibited from taxing under the Constitution or laws of the United States.

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Under the United States Constitution, immunity from state taxation is appropriate only when a levy falls on the United States itself, or on an agency or instrumentality so closely connected to the federal government that the two cannot realistically be viewed as separate entities, as far as the activity being taxed is concerned; it is not relevant to the determination of immunity that a contractor is purchasing property for the federal government, or that the federal government shoulders the entire economic burden of the tax. United States v. New Mexico, \_\_\_ U.S. \_\_\_, 102 S. Ct. 1373 (1982).

Based on the foregoing, it is ruled that the sales tax will apply to the Company's purchase of the Reports for use in its contract with the Small Business Administration.

Very truly yours,



Commissioner of Revenue

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